IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WP(C).No. 13188 of 2006(T)

PETITIONER:

S.SUMANGALA,
MOOKKATHU HOUSE, ALUMPEEDIKA P.O.,
OACHIRA, KOLLAM DISTRICT.
(RETD. ASSISTANT COMMISSIONER,
TRAVANCORE DEVASWOM BOARD, AMBALAPPUZHA.)

BY ADV. SRI.K.SASIKUMAR

RESPONDENTS:

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1. TRAVANCORE DEVASWOM BOARD, REP.
BY ITS SECRETARY, THIRUVANANTHAPURAM.

2. DEVASWOM COMMISSIONER,
TRAVANCORE DEVASWOM BOARD,
THIRUVANANTHAPURAM.

3. ASSISTANT COMMISSIONER,
TRAVANCORE DEVASWOM BOARD, AMBALAPUZHA.

BY ADV. SRI.D.SREEKUMAR, SC, TDB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI,J.

W.P (C) No.13188 of 2006

Dated this the 12th November, 2007

J U D G M E N T

The petitioner, who retired from the service of the Travancore Devaswom Board on 31.3.2003 is aggrieved by the fact that the DCRG due to him has not been disbursed. Subsequent to the institution of the petition, on instructions from the Standing Counsel for the respondents the amount due to him by way of DCRG less the amount fixed as liability under Exhibit-P5 has been disbursed to the petitioner. Petitioner challenges Exhibit P5.

2. The dispute which now survives in this writ petition is centered round the question whether the Board was entitled to continue to levy interest on the balance amount due from the petitioner by way of car loan which the petitioner had availed, while in service. It is now admitted that an amount of Rs.48,333/- was due from the petitioner under the car loan account at the time of retirement. The petitioner has no dispute regarding the recovery of the said amount or adjustment from the DCRG otherwise due to him. What is sought to be recovered under the car loan account is Rs.63,645/- and not Rs.48,333/-.

This is on account of the fact that interest on the balance amount payable by the petitioner under the car Car loan Account was being levied,even after the retirement of the petitioner. The question is whether the said action is correct or not.

3. Learned counsel for the petitioner Mr.K.Sasikumar contends that the total amount due to the petitioner by way of DCRG even going by Exhibit-P5 is Rs.1,66,008/- and obviously this was sufficient to absorb the liability of the petitioner under the car loan account which on the date of retirement was Rs.48,333/-. The entitlement of the petitioner to the DCRG arises on the date of retirement . Therefore, since larger amount was due to the petitioner by way of retirement benefits it was not open to the Board to continue to levy interest on the balance amount due from the petitioner under the Car Loan account.

4. Mr.D.Sreekumar, learned counsel for the Board submits that the petitioner had earlier agreed for levy of interest on the defaulted instalments under the Car Loan account. In levying interest the Board had only acted as per

the intimation given to the petitioner at the time of disbursal of car loan. Interest can be levied either in terms of the contract or by the statute wherever permissible. In a case like the present one, interest could be levied in terms of the car loan agreement. Interest was levied during the petitioner's service. But when the petitioner retired from service obviously, he became entitled to the retirement benefits which will include the DCRG also. Undisputedly, an amount of Rs.1,66,008/- became due to the petitioner by way of DCRG. On the other hand on the date of retirement an amount of Rs.48,333/- was due from the petitioner to the Board. Since there was no dispute regarding the liability, the Board was entitled to adjust the amount from the DCRG due to the petitioner. Since the petitioner's entitlement to DCRG arose on the date of retirement and the petitioner's liability under the car loan account was determinable on the same day, it is only appropriate that the adjustment of amount due from the petitioner should have been made by the Devaswom from the DCRG payable to the petitioner with effect from the date on which the petitioner became entitled

to DCRG. Had it been done obviously there would not have been an occasion for levy of interest, subsequent to the petitioner's retirement.

5. In any view of the matter, in the present case, the car loan was sanctioned by the Board itself. It was not a case where the Board was refinancing an employee after obtaining a loan from another financing agency. In other words, the Board continued to be the custodian of the amounts due to the petitioner from the date on which petitioner retired from service. I am of the view that levy of interest on the amount remaining to be paid by the petitioner under the car loan account from the date of his retirement is illegal and unjustifiable.

6. Thus, the writ petition is allowed in part. Exhibit-P5 is set aside. The Board is not entitled to levy interest on the amount due from the petitioner under the car loan account for the period subsequent to the petitioner's retirement. Exhibit-P5 is upheld in other respects. Balance amount due to the petitioner in consequence thereof shall be disbursed within a period of one month from the date of

receipt of a copy of this judgment.

6. The petitioner has a claim regarding the last month's salary. In the counter affidavit filed on behalf of the respondents, it is made clear that petitioner can report before the Assistant Devaswom Commissioner, Ambalapuzha and on request in that regard the competent authority shall disburse the same. The submission is recorded. This shall be done without further delay.

The writ petition is disposed of as above.

(V.GIRI, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007